

## **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed September 7, 2007. Claims 1 and 3-25 remain pending in the present application. Reconsideration and allowance of the application and pending claims are respectfully requested.

### **1. Response to Objection of Claims**

Claim 2 has been objected to under 37 CFR 1.75(c) for allegedly being of improper dependent form for failing to further limit the subject matter of the base claim. Claim 2 is canceled without prejudice, waiver, or disclaimer, and therefore, the rejection to the claim is rendered moot. Applicant takes this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicant reserves the right to pursue the subject matter of the canceled claim in a continuing application, if Applicant so chooses, and does not intend to dedicate any of the canceled subject matter to the public.

### **2. Response to Rejection of Claims under 35 U.S.C. §101**

Claim 1 has been rejected under 35 U.S.C. §101 for allegedly being directed to non-statutory subject matter. Claim 1 has been amended to remove reference to a computer system so that it does not appear that the claim is directed to both a system and method claim. Withdrawal of the rejection is respectfully requested.

### **3. Response to Rejections of Claims under 35 U.S.C. §112**

Claim 1 has been rejected under 35 U.S.C. §112, Second Paragraph for allegedly being directed to non-statutory subject matter. As stated above, claim 1 has been amended to remove reference to a computer system so that it does not appear that the claim is directed to both a system and method claim. Withdrawal of the rejection is respectfully requested.

Claim 3 has been rejected under 35 U.S.C. §112, Second Paragraph for allegedly being unclear and indefinite. The Office Action states that it is not clear with respect to claim 3 that processors having an "increase-decrease" condition would be excluded from

being incremented according to FIG. 5 and the specification. Claim 3 has been amended to make clear that claim 3 describes the “decrease-increase” condition where all the processors may be incremented, as shown in block 508 of FIG. 5. Accordingly, withdrawal of the rejection is respectfully requested.

**4. Response to Rejections of Claims under 35 U.S.C. §102**

Claims 1-25 have been rejected under 35 U.S.C. §102(e) as allegedly being anticipated by *Beaumont* (U.S. Patent Publication No. 2004/0216117 A1). Applicant respectfully traverses this rejection.

It is axiomatic that “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.” *W. L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983). Therefore, every claimed feature of the claimed subject matter must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. §102(e). In the present case, not every feature of the claimed subject matter is represented in the *Beaumont* reference.

**a. Claim 1**

As provided in independent claim 1, Applicant claims:

A method for redistributing workload among a plurality of processors, each processor of said plurality of processors being associated with a load value that indicates a level of workload assigned to said each processor, comprising:

determining an average utilization level for said plurality of processors; and

***if a utilization level of one of said processors is above said average utilization level by more than a predefined threshold, incrementing, in a first scenario, said load value assigned to each of said plurality of processors, except processors whose utilization level is above said average utilization level by more than said predefined threshold and whose immediately preceding adjustment to its load value in a previous adjustment cycle was an increment.***

(Emphasis added).

Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Beaumont* does not disclose, teach, or suggest at least “if a utilization

level of one of said processors is above said average utilization level by more than a predefined threshold, incrementing, in a first scenario, said load value assigned to each of said plurality of processors, except processors whose utilization level is above said average utilization level by more than said predefined threshold and whose immediately preceding adjustment to its load value in a previous adjustment cycle was an increment," as emphasized above.

Rather, *Beaumont* describes a method for balancing the load of a parallel processing system. In this method, a first total cumulative deviation and a second total cumulative deviation are determined. The first total cumulative deviation is used to determine whether a task should be transferred or received from a processing element to the left of the processing element being considered. The second total cumulative deviation is used to determine whether a task should be transferred or received from a processing element to the right of the processing element being considered. *Beaumont* does not consider the past or previous adjustment that was made for the processing element being considered. As such, *Beaumont* fails to teach or suggest at least "if a utilization level of one of said processors is above said average utilization level by more than a predefined threshold, incrementing, in a first scenario, said load value assigned to each of said plurality of processors, except processors whose utilization level is above said average utilization level by more than said predefined threshold and whose immediately preceding adjustment to its load value in a previous adjustment cycle was an increment," as recited in claim 1. (Emphasis added).

For at least these reasons, *Beaumont* does not teach or suggest all of the features of claim 1, and the rejection of claim 1 should be withdrawn.

**b. Claims 3-13**

Dependent claims 3-13 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that dependent claims contain all the features of allowable independent claim 1. For at least this reason, the rejections of claims 3-13 should be withdrawn.

c. **Claim 14**

As provided in independent claim 14, Applicant claims:

An article of manufacture comprising a program storage medium having computer readable code embodied therein, said computer readable code being configured for redistributing workload among a plurality of processors in a computer system, each processor of said plurality of processors being associated with a load value that indicates a level of workload assigned to said each processor, comprising:

computer readable code for determining an average utilization level for said plurality of processors; and

***computer readable code for incrementing in a first scenario, if a utilization level of one of said processors exceeds said average utilization level by more than a predefined threshold, said load value assigned to each of said plurality of processors, except processors whose utilization level exceeds said average utilization level by more than said predefined threshold and whose immediately preceding adjustment to its load value in a previous adjustment cycle was an increment.***

(Emphasis added).

Applicant respectfully submits that independent claim 14 is allowable for at least the reason that *Beaumont* does not disclose, teach, or suggest at least "computer readable code for incrementing in a first scenario, if a utilization level of one of said processors exceeds said average utilization level by more than a predefined threshold, said load value assigned to each of said plurality of processors, except processors whose utilization level exceeds said average utilization level by more than said predefined threshold and whose immediately preceding adjustment to its load value in a previous adjustment cycle was an increment," as emphasized above.

Rather, *Beaumont* describes a method for balancing the load of a parallel processing system. In this method, a first total cumulative deviation and a second total cumulative deviation are determined. The first total cumulative deviation is used to determine whether a task should be transferred or received from a processing element to the left of the processing element being considered. The second total cumulative deviation is used to determine whether a task should be transferred or received from a processing element to the right of the processing element being considered. *Beaumont* does not consider the past or previous adjustment that was made for the processing element being considered. As such, *Beaumont* fails to teach or suggest at least

"computer readable code for incrementing in a first scenario, if a utilization level of one of said processors exceeds said average utilization level by more than a predefined threshold, said load value assigned to each of said plurality of processors, except processors whose utilization level exceeds said average utilization level by more than said predefined threshold and whose immediately preceding adjustment to its load value in a previous adjustment cycle was an increment," as recited in claim 14.

For at least these reasons, *Beaumont* does not teach or suggest all of the features of claim 14, and the rejection of claim 14 should be withdrawn.

**d. Claims 15-25**

Dependent claims 15-25 (which depend from independent claim 14) are allowable as a matter of law for at least the reason that dependent claims contain all the features of allowable independent claim 14. For at least this reason, the rejections of claims 15-25 should be withdrawn.

***CONCLUSION***

For at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,

  
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